

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Ronald J. and Sandra K. Zigan

Chapter 7

Debtor(s).

BK 04-60444 DDO

SUPPLEMENT TO MOTION TO DISMISS CHAPTER 7 CASE

1. The hearing on the United States Trustee's motion to dismiss the above-captioned case under 11 U.S.C. §707 is set on September 28, 2004, at 10:30 a.m. before the United States Bankruptcy Court, Courtroom No. 2, United States Courthouse, 118 South Mill Street, Fergus, Falls, MN 56537.

2. The United States Trustee's motion was brought under § 707(a) and (b). The debtors have provided information requested by the United States Trustee. The United States Trustee will proceed under § 707b.

3. The debtors provided pay stubs from their employment. Ms. Zigan provided a letter stating that her wages were cut at the end of 2003. Based on the pay stubs, the debtors have the following average net pay in 2004:

Sandra Zigan pay stub dated 6/11/04 (Att. Ex. 1)

| | |
|-----------|-----------------|
| YTD Gross | 10,162.83 |
| Fed | (1045.74) |
| FICA | (777.46) |
| State | <u>(382.61)</u> |
| Net | \$ 7,957.02 |

\$ 7,957.02 divided by 22 = \$ 361.68 x 52 divided by 12 = \$ 1,567.29 average net pay in '04

Ronald Zigan pay stub dated 6/11/04 (Att. Ex. 2)

| | |
|-------------|---------------|
| YTD Gross | 18,748.03 |
| Fed | (1932.51) |
| FICA | (1434.23) |
| State | (885) |
| Opt Life | (145.2) |
| Spouse Life | (48.4) |
| STD | <u>(93.5)</u> |
| Net | \$ 14,209.19 |

\$ 14,209.19 divided by 11th pay period x 26 divided by 12 = \$ 2,798.78

Total monthly net household income = \$ 4,549.61

4. The debtors are married and have no dependents. On Schedule J, they list monthly net expenses totaling \$ 3,998.65. Several expenses are high, notably food and personal hygiene, clothing, maintenance, recreation, glasses, total car payments, tobacco products. The debtors provided receipts for certain of these expenses, but the receipts contained many one-time purchase items, such as glasses, water heater. It is not necessary to reduce any items in the budget, given the disposable income available, but the United States Trustee reserves the right to so.

5. Net household income of \$ 4,549.61 less Schedule \$ 3,998.65 provides disposable income of \$ 550.96.

6. Disposable income of \$ 550.96 would enable the debtors to pay \$ 19,834.56 or approximately 57% of their general unsecured debts in a hypothetical thirty-six month Chapter 13 plan.

Over a hypothetical sixty month Chapter 13 plan, the debtors could pay \$ 33,057.60 or approximately 95% of their general unsecured debts.

7. The ability to fund a hypothetical Chapter 13 plan is cause to dismiss the case under § 707(b).

8. Instead of dismissal, the United States Trustee does not object to conversion of this

case to Chapter 13.

WHEREFORE, the United States Trustee supplements his motion to dismiss this case and requests that the Court dismiss this Chapter 7 case or grant such other relief as necessary.

Dated: September 15, 2004

Respectfully submitted,
HABBO G. FOKKENA
United States Trustee
Region 12

By: /s/ Sarah J. Wencil
Sarah J. Wencil
Trial Attorney
United States Trustee's Office
1015 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415
IA ATTY No. 14014
(612) 664-5500

Exhibit 1

| CO. | EMPLOYEE NAME | EMP. NO. | HOME DEPT. | D. C. | OCCUPATION | PERIOD ENDING | CHECK NO. | NET PAY |
|---------------------------|------------------|----------|------------|---------|----------------------------|---------------|-----------|----------|
| 01 | ZIGAN, SANDRA K | | 61 | | S M OP | 5/28/04 | | 303.25 |
| EARNINGS/ADJUST./ADVANCE. | CODE | HOURS | RATE | AMOUNT | TAXES/DEDUCT./DEFER./BENE. | CODE | AMOUNT | Y-T-D |
| VACATION TIME | VA | 8.00 | 11.560 | 92.48 | CREDIT UNION | 03 | 50.00 | 1,000.00 |
| REGULAR PAY | RG | 31.00 | 11.560 | 358.36 | MINN-ST-WH/TAX | ST | 17.33 | 351.66 |
| CURRENT GROSS PAY | SUMMARY | FEDERAL | FICA | STATE | COUNTY | LOCAL | OTHER | |
| 450.84 | Taxable Current | 450.84 | 450.84 | 450.84 | | | | |
| | Taxable Y-T-D | 9330.51 | 9330.51 | 9330.51 | | | | |
| 9330.51 | Withheld Current | 45.78 | 34.48 | 17.33 | | | | |
| | Withheld Y-T-D | 961.64 | 713.78 | 351.66 | | | | |

| CO. | EMPLOYEE NAME | EMP. NO. | HOME DEPT. | D. C. | OCCUPATION | PERIOD ENDING | CHECK NO. | NET PAY |
|---------------------------|------------------|----------|------------|----------|----------------------------|---------------|-----------|----------|
| 01 | ZIGAN, SANDRA K | | 61 | | S M OP | 6/11/04 | | 242.03 |
| EARNINGS/ADJUST./ADVANCE. | CODE | HOURS | RATE | AMOUNT | TAXES/DEDUCT./DEFER./BENE. | CODE | AMOUNT | Y-T-D |
| VACATION TIME | VA | 8.00 | 11.560 | 92.48 | CREDIT UNION | 03 | 50.00 | 1,100.00 |
| REGULAR PAY | RG | 24.00 | 11.560 | 277.44 | MINN-ST-WH/TAX | ST | 13.00 | 382.61 |
| CURRENT GROSS PAY | SUMMARY | FEDERAL | FICA | STATE | COUNTY | LOCAL | OTHER | |
| 369.92 | Taxable Current | 369.92 | 369.92 | 369.92 | | | | |
| | Taxable Y-T-D | 10162.83 | 10162.83 | 10162.83 | | | | |
| 10162.83 | Withheld Current | 36.59 | 28.30 | 13.00 | | | | |
| | Withheld Y-T-D | 1045.74 | 777.46 | 382.61 | | | | |

| CO. | EMPLOYEE NAME | EMP. NO. | HOME DEPT. | D. C. | OCCUPATION | PERIOD ENDING | CHECK NO. | NET PAY |
|---------------------------|------------------|----------|------------|---------|----------------------------|---------------|-----------|----------|
| 01 | ZIGAN, SANDRA K | | 61 | | S M OP | 6/04/04 | | 276.56 |
| EARNINGS/ADJUST./ADVANCE. | CODE | HOURS | RATE | AMOUNT | TAXES/DEDUCT./DEFER./BENE. | CODE | AMOUNT | Y-T-D |
| HOLIDAY TIME | HL | 8.00 | 11.560 | 92.48 | CREDIT UNION | 03 | 50.00 | 1,050.00 |
| REGULAR PAY | RG | 32.00 | 11.560 | 369.92 | MINN-ST-WH/TAX | ST | 17.95 | 369.61 |
| | | | | | 346 MNTHLY DUES | E1 | 35.00 | |
| CURRENT GROSS PAY | SUMMARY | FEDERAL | FICA | STATE | COUNTY | LOCAL | OTHER | |
| 462.40 | Taxable Current | 462.40 | 462.40 | 462.40 | | | | |
| | Taxable Y-T-D | 9792.91 | 9792.91 | 9792.91 | | | | |
| 9792.91 | Withheld Current | 47.51 | 35.38 | 17.95 | | | | |
| | Withheld Y-T-D | 1009.15 | 749.16 | 369.61 | | | | |

Exhibit 2

INSTANT WEB COMPANIES

STATEMENT OF EARNINGS - DETACH AND KEEP FOR YOUR RECORDS

 Period Date: 6/05/2004
 Check Date: 6/11/2004

 INSTANT WEB, INC.
 7951 POWERS BLVD.
 CHANHASSEN, MN 55317

| | | | |
|------------|----------------|-------------|--------------|
| <u>CO#</u> | <u>Div/Loc</u> | <u>Dept</u> | <u>Shift</u> |
| 05 | 05 | 00624 | 1 |

| | | |
|-----------------------|--------|------------|
| [REDACTED] | Emp #: | [REDACTED] |
| RONALD L ZIGAN | | |
| 3rd Street West | | |
| Browerville, MN 56438 | | |

Status/Exemptions

Federal: M/00 State: MN: M/00

| | | |
|-----------------|--------------|----------------|
| <u>Earnings</u> | <u>Hours</u> | <u>Current</u> |
| SALARY | 72.00 | 1421.79 |
| HOL | 8.00 | 157.98 |

| | |
|----------------|------------|
| <u>Current</u> | <u>YTD</u> |
|----------------|------------|

GROSS HOURS/PAY 80.00 \$1,579.77

| | | |
|-------------------------|----------------|------------|
| <u>Taxable Earnings</u> | <u>Current</u> | <u>YTD</u> |
|-------------------------|----------------|------------|

| | | |
|-------|---------|----------|
| Gross | 1579.77 | 18748.03 |
| Fed | 1579.77 | 18748.03 |
| FICA | 1579.77 | 18748.03 |
| State | 1579.77 | 18748.03 |

| | | |
|-------------------|----------------|------------|
| <u>Deductions</u> | <u>Current</u> | <u>YTD</u> |
|-------------------|----------------|------------|

| | | |
|-------------|--------|---------|
| Federal | 163.31 | 1932.51 |
| FICA | 120.86 | 1434.23 |
| State | 75.00 | 885.00 |
| OPT LIFE | 13.20 | 145.20 |
| SPOUSE LIFE | 4.40 | 48.40 |
| STD | 8.50 | 93.50 |

Vac/Sick/Pers/Other

| | |
|-----------|--------|
| VAC - HRS | 172.89 |
|-----------|--------|

| | |
|-----------|-------|
| PER - HRS | 29.85 |
|-----------|-------|

| | | |
|------------------------|----------------|------------|
| <u>Deductions Cont</u> | <u>Current</u> | <u>YTD</u> |
|------------------------|----------------|------------|

Net Pay \$1,194.50

 Ded Ttl
 Chk Amt

| | |
|------------|------------|
| \$385.27 | \$4,538.84 |
| \$1,194.50 | |

254796

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Ronald J. and Sandra K. Zigan

Chapter 7

Debtor(s).

BK 04-60444 DDO

CERTIFICATE OF MAILING

I, Terri Frazer, certify under penalty of perjury that I am an employee in the Office of the United States Trustee for the District of Minnesota and am a person of such age and discretion as to be competent to serve papers.

That on September 15, 2004, I served a copy of the Supplement to Motion to Dismiss in the above-referenced case by fax upon counsel and by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Minneapolis, Minnesota.

Addressee(s):

Ronald J. and Sandra K. Zigan
261 3rd Street West
Browerville, MN 56438

Logan Moore
1118 Broadway
Alexandria, Mn 56308

Tamara L. Yon
PO Box 605
Crookston, MN 56716



**Office of the United States Trustee
Terri Frazer**

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Ronald J. and Sandra K. Zigan

Chapter 7

Debtor(s).

BK 04-60444 DDO

ORDER

At Fergus Falls, Minnesota, the _____ day of _____, 2004, this matter came before the Court for hearing on the Motion of the United States Trustee's Office for an Order dismissing this Chapter 7 case pursuant to 11 U.S.C. §707. Appearances were noted in the record.

The Court made its findings of fact and conclusions of law on the record pursuant to Rule 52 of the Federal Rules of Civil Procedure and Bankruptcy Rule 7052.

IT IS HEREBY ORDERED:

That the Chapter 7 bankruptcy case filed by the above-captioned debtors is dismissed pursuant to 11 U.S.C. Section 707(b).

The Honorable Dennis D. O'Brien
United States Bankruptcy Judge